

CALIFORNIA COASTAL COMMISSION

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Staff: Fernie Sy-LB
Staff Report: May 25, 2006
Hearing Date: June 13-16, 2006
Commission Action:

**STAFF REPORT: REGULAR CALENDAR**

APPLICATION NUMBER: 5-05-263

APPLICANTS: John and Carrie Olson

AGENT: William B. Guidero

PROJECT LOCATION: 435 Canal Street, City of Newport Beach (County of Orange)

PROJECT DESCRIPTION: Demolition and construction of a two-story, 2,865 square foot single-family residence with an attached 460 square foot two-car garage located on a water front parcel (Semeniuk Slough). Approximately 70 cubic yards of grading will be performed for purposes of recompaction and will be balanced on site.

SUMMARY OF STAFF RECOMMENDATION:

Commission staff is recommending **APPROVAL** of the proposed project subject to **Nine (9) Special Conditions** requiring: **1)** submittal of revised final plans; **2)** an assumption-of-risk agreement; **3)** no future shoreline protective device agreement; **4)** future development agreement; **5)** conformance with the submitted construction staging plan; **6)** conformance with certain requirements related to the storage and management of construction debris and equipment; **7)** conformance with the submitted drainage and run-off control plan; **8)** adherence to requirements for exterior lighting adjacent to the wetland; and **9)** a deed restriction against the residential property, referencing all of the special conditions contained in this staff report. The major issue of this staff report concerns waterfront development that could be affected by flooding and erosion during extreme storm events and development adjacent to a wetland (Semeniuk Slough).

Section 30604 of the Coastal Act provides for the issuance of coastal development permits directly by the Commission in regions where the local government having jurisdiction does not have a certified Local Coastal Program. The City of Newport Beach only has a certified Land Use Plan. Therefore, the Coastal Commission is the permit issuing entity and the standard of review is Chapter 3 of the Coastal Act. The certified Land Use Plan may be used for guidance.

LOCAL & OTHER AGENCY APPROVALS RECEIVED: City of Newport Beach Planning Department Approval-In-Concept No. 0816-2005 dated April 19, 2005; and Department of the Army License No. DACW09-3-05-0453 dated June 29, 2005.

SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach certified Land Use Plan; Letter to William B. Guidero from Commission staff dated August 9, 2005; Information received from William B. Guidero on August 17, 2005; Letter to William B. Guidero from Commission staff dated September 16, 2005; Information received from William B. Guidero on September 26, 2005; Letter to William B. Guidero from Commission staff dated October 26, 2005; Information received from

William B. Guidero on November 1, 2005; Letter to William B. Guidero from Commission staff dated November 30, 2005; Information received from William B. Guidero on February 1, 2006; and *Drainage Assessment, Mr. & Mrs. Olson, 435 Canal Street, Newport Beach, CA 92663* prepared by FJK Engineering received February 1, 2006.

LIST OF EXHIBITS

1. Location Map
2. Site Plan/Stringline/Floor Plans/Elevation Plans
3. Erosion Control/Stringline/Staging Plan

I. STAFF RECOMMENDATION, MOTION AND RESOLUTION OF APPROVAL

MOTION: *I move that the Commission approve Coastal Development Permit No. 5-05-263 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby **APPROVES** a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittees or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.

3. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittees to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

1. SUBMITTAL OF REVISED FINAL PLANS

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT,** the applicants shall submit to the Executive Director for review and written approval, two (2) sets of final site and building plans that substantially conform with the plans by William Belden Guidero Planning Design received on May 19, 2006, but shall be revised to include the following:

The existing unpermitted wooden deck located at the rear of the proposed residence shall be shaded and marked "this element not permitted by any coastal development permit" on the plans.

- B.** The permittees shall undertake the development authorized by the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

2. ASSUMPTION OF RISK, WAIVER OF LIABILITY AND INDEMNITY

By acceptance of this Permit, the applicants acknowledge and agree (i) that the site may be subject to hazards from flooding and erosion; (ii) to assume the risks to the applicants and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

3. NO FUTURE SHORELINE PROTECTIVE DEVICE

- A.** By acceptance of this Permit, the applicants agree, on behalf of themselves and all other successors and assigns, that no shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. 5-05-263 including, but not limited to, the residence, and any future improvements, in the event that the development is threatened with damage or

destruction from flooding, erosion, storm conditions or other natural hazards in the future. By acceptance of this permit, the applicants hereby waive, on behalf of themselves and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.

- B.** By acceptance of this Permit, the applicants further agree, on behalf of themselves and all successors and assigns, that the landowner shall remove the development authorized by this permit, including the addition and remodel, if any government agency has ordered that the structure is not to be occupied due to any of the hazards identified above. In the event that portions of the development fall to the wetland before they are removed, the landowner shall remove all recoverable debris associated with the development from the wetland and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

4. FUTURE DEVELOPMENT RESTRICTION

This permit is only for the development described in Coastal Development Permit No. 5-05-263. Pursuant to Title 14 California Code of Regulations Section 13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(a) shall not apply to the development governed by Coastal Development Permit No. 5-05-263. Accordingly, any future improvements to the residence authorized by this permit, including but not limited to repair and maintenance identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections 13252(a)-(b), shall require an amendment to Permit No. 5-05-263 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

5. CONFORMANCE WITH THE SUBMITTED CONSTRUCTION STAGING PLAN

The applicants shall conform with the construction staging plan received on May 19, 2006 showing construction equipment, materials or activity shall not occur outside the staging area and construction corridor identified on the site plan and that construction equipment, materials, or activity shall not be placed in any location which would result in impacts to wetlands.

6. STORAGE OF CONSTRUCTION MATERIALS, MECHANIZED EQUIPMENT AND REMOVAL OF CONSTRUCTION DEBRIS

The permittees shall comply with the following construction-related requirements:

- A.** No construction materials, debris, or waste shall be placed or stored where it may enter a storm drain or be subject to tidal erosion and dispersion;
- B.** Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of construction;
- C.** Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of construction-related materials, and to contain sediment or contaminants associated with construction activity, shall be

implemented prior to the on-set of such activity. BMPs and GHPs which shall be implemented include, but are not limited to: stormdrain inlets must be protected with sandbags or berms, all stockpiles must be covered, and a pre-construction meeting should be held for all personnel to review procedural and BMP/GHP guidelines. All BMPs shall be maintained in a functional condition throughout the duration of the project.

- D. Construction debris and sediment shall be properly contained and secured on site with BMPs, to prevent the unintended transport of sediment and other debris into coastal waters by wind, rain or tracking. Construction debris and sediment shall be removed from construction areas as necessary to prevent the accumulation of sediment and other debris, which may be discharged into coastal waters. Debris shall be disposed at a debris disposal site outside the coastal zone.

7. **CONFORMANCE WITH THE SUBMITTED DRAINAGE AND RUNOFF CONTROL PLAN**

The applicants shall conform with the drainage and run-off control plan received on May 19, 2006 showing roof drainage and runoff from all impervious areas directed to vegetated/landscaped areas. Vegetated landscaped areas shall only consist of native plants or non-native drought tolerant plants, which are non-invasive. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Exotic Pest Plant Council, or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized within the property.

8. **LIGHTING**

No lighting associated with the project shall significantly impact adjacent wetland habitat. All replaced or new lighting within the development shall be directed and shielded so that light is directed toward the ground and away from the wetlands (Semeniuk Slough).

9. **DEED RESTRICTION**

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit to the Executive Director for review and approval documentation demonstrating that the landowner has executed and recorded against the residential parcel governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire residential parcel governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. PROJECT LOCATION AND DESCRIPTION

The project site is located at 435 Canal Street in the City of Newport Beach, Orange County (Exhibits #1). The lot size is approximately 2,857 square feet and the City of Newport Beach certified Land Use Plan (LUP) designates the site for Medium Density Residential and the proposed project adheres to this designation. The project site faces upon the tidally influenced Semeniuk Slough located inland of Pacific Coast Highway. Semeniuk Slough is a remnant channel of the Santa Ana River, which formed when the Santa Ana River entered Newport Bay in the vicinity of present day River Avenue. Semeniuk Slough branches off the Santa Ana River and receives water from the Banning Channel and adjacent oil fields, wetlands and upland areas. While Semeniuk Slough is tidally influenced, there is presently no open boating passage between the slough and the bay or ocean. Semeniuk Slough is a wetland considered an environmentally sensitive habitat area and unique coastal resource in the City's Certified Land Use Plan. The Semeniuk Slough is within the City of Newport Beach and is designated as Open Space in the certified Land Use Plan. The land on the far side of the slough is relatively undeveloped where there are wetlands and some oil production facilities. This relatively vacant land is within unincorporated Orange County and is part of the approximately 75-acre area known as the Newport Banning Ranch. The City's certified Land Use Plan indicates that vertical public access to the slough is present along street ends located off of Canal Street. For example, public access is available at a street end located three (3) lots (approximately 130') north of the project site.

The project site is composed of two separate but adjacent areas of land. The 1st property is the applicants' owned property where there is an existing two-story single-family residence with an attached two-car garage located on site (a.k.a. 'residential parcel/property'). The 2nd property is land owned by the Army Corps of Engineers (ACOE) and licensed to the applicants and an existing approximately 28' (w) x 38' (l) wooden deck over the Semeniuk Slough is located on this parcel. The Mean High Tide Line (MHTL) is located at approximately +9.40', which is located underneath the existing wooden deck and is also the location of an existing berm located underneath the deck. The existing wooden deck is located at elevation +10.57'. The existing single-family residence is located a minimum 26-feet and a maximum 35-feet from the MHTL (the existing habitable area of the residential development is built out to the edge of the existing deck) (Exhibit #3). No work is proposed under this application on the ACOE's property adjacent to the water (Semeniuk Slough).

The residential parcel is flanked on the north and south by single-family residences; on the east by Canal Street; and on the west by ACOE land and the Semeniuk Slough. On this western area of land owned by the ACOE is an existing approximately 28' (w) x 36' (l) wooden deck.

On the Residential Property Owned by the Applicants

The applicants are proposing demolition and construction of a two-story, 28'-6" above existing grade, 2,865 square foot single-family residence with an attached 460 square foot two-car garage located on a water front parcel (Semeniuk Slough). The existing habitable area of the residential development is built out to the edge of the existing deck, but the new habitable area will be setback 5' from the edge of the existing deck. Approximately 70 cubic yards of grading (30 cubic yards of cut and 30 cubic yards of fill) will be performed for purposes of recompaction and will be balanced on site (Exhibits #2-3).

On Land Owned by the ACOE

No work is proposed on the land owned by the ACOE and licensed to the applicants.

Commission staff has determined that no previous coastal development permits were issued for the existing wooden deck located on the ACOE owned lands. The applicants are not seeking authorization for this existing unpermitted development through this application. Approval of the proposed project does not authorize the unpermitted wooden deck. The matter has been referred to the Commission's enforcement division for further investigation.

B. VISUAL QUALITY

Section 30251 of the Coastal Act states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

The proposed project includes the demolition and construction of a residential structure on a waterfront lot. If not sited appropriately, this structure would have adverse impacts upon views to and along the slough and would be visually incompatible with the character of the surrounding area. Furthermore, appropriate siting can restore and enhance visual quality.

The site is visible from a trail, which runs along the north side of the slough on the opposite shore from the proposed development. Development on this waterfront parcel can affect public views along the coast from the public areas. Degradation of those views would be inconsistent with Section 30251 of the Coastal Act. Degradation of views can occur when development is not consistent with the character of surrounding development. For instance, development seaward of the line of development established for an area can interfere with views to and along the shoreline leading to degradation of those views.

The Commission has recognized that, in a developed area, where new construction is generally infilling and is otherwise consistent with the Coastal Act policies, no part of the proposed development should be built further seaward than a line drawn between the nearest adjacent corners of either decks or habitable structures of the immediately adjacent homes. These lines establish the existing line of development in the area. In order to determine whether the proposed project is compatible with the established line of development, the Commission has typically used two methods to review waterward encroachment of development toward the slough along this section of Canal Street in Newport Beach: 1) setbacks from the slough-front property line; and 2) string line evaluation. The City of Newport Beach setback requirement for in this area is 5-feet. The proposed habitable area would be setback a minimum 19-feet and a maximum 24-feet from the rear property line (rear lot line is at an angle) and the proposed 2nd floor deck would encroach a maximum 5' waterward, but is set back a minimum 13-feet and a maximum 16-feet from the rear property line. Therefore, the project conforms to the city setback requirements. However, use of the City setback and/or stringline to establish the waterward limit of development is determined at a

site-specific level. Setbacks and string lines are applied to limit new development from being built any further waterward than existing adjacent development.

1. **City Setbacks**

Section 30251 of the Coastal Act states that permitted development shall be designed “*to be visually compatible with the character of the surrounding area.*” Therefore, proposed development must be compatible with its surroundings. Though the plans submitted by the applicants show that the project conforms to the City zoning setback requirements of 5-feet from the rear property line, conformance to the City required setback would allow waterward encroaching development here. Allowing development to comply with the City setbacks would not achieve the objectives of Coastal Act Section 30251, as the proposed project would encroach waterward significantly and would not, therefore, be compatible with the character of the surrounding area. Section 30251 of the Coastal Act states that permitted development should protect views and be visually compatible with the surrounding area. Therefore, the City setback cannot be used in this particular situation.

2. **Stringline Policy**

The stringline policy is used by the Commission as one means of determining the appropriate setback for coastal developments. Since the City setback cannot be used in this particular situation, the stringline will be used instead. This policy applies to infill development and establishes two separate types of stringlines, a structural stringline for the principal structure and an accessory structure (i.e., deck, patios, etc.) stringline. A structural stringline for principal structures refers to the line drawn between the *nearest* adjacent corners of adjacent principal structures. Similarly, an accessory structure (i.e., deck, patios, etc.) stringline refers to the line drawn between the *nearest* adjacent corners of adjacent accessory structures.

A principal structure stringline and accessory structure stringline use the corners of *nearest* adjacent principal structures and accessory structures, normally located to the adjacent sides of the development. The applicants have submitted stringline drawings to Commission staff for analysis (Exhibits #2-3). The applicants’ stringline drawings shows the proposed project in relation to a “principal structure stringline” and “accessory structure stringline” which are consistent with Section 30251 of the Coastal Act. While the proposed development does adhere to the stringlines, there is an existing unpermitted wooden deck located on site. The applicants are not seeking authorization for this existing unpermitted development through this application and approval of the proposed development does not authorize the unpermitted wooden deck. Therefore, in order to clarify that the approval of the proposed project does not authorize this unpermitted wooden deck, the Commission imposes **Special Condition No. 1**, which requires the applicants to submit revised plans that show and state that the existing wooden deck is not permitted by any Coastal Development Permit.

3. **Cumulative Impacts**

The proposed project, as submitted, conforms to the existing pattern of development. No changes are proposed to the existing wooden deck. However, clarification is needed to show that the existing unpermitted wooden deck would not be authorized with the proposed

project. If allowed it would set a precedent for future development to encroach waterward in the subject area. Over time, incremental impacts can have a significant cumulative adverse visual impact. Approval of the proposed project as currently shown would set a precedent for the construction of other such development along the Semeniuk Slough that would significantly cause adverse visual impacts and encroach waterward. Scenic resources would not be preserved. Thus, the Commission is imposing **Special Condition No. 1**, which requires the applicants to submit revised plans that show and state that the existing wooden deck is not permitted by any Coastal Development Permit.

The Commission finds that the project, as conditioned, protects views and is visually compatible with the surrounding area. **Special Condition No. 1** has been imposed which requires the applicants to submit revised plans that show and state that the existing wooden deck is not permitted by any Coastal Development Permit. Therefore, as conditioned, the Commission finds that the proposed project is consistent with Section 30251 of the Coastal Act.

C. FLOODING AND EROSION HAZARDS

Section 30253 of the Coastal Act states, in relevant part:

New development shall:

(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

The subject site is located adjacent to Semeniuk Slough, a tidally influenced wetland that branches off the Santa Ana River. Semeniuk Slough is part of the Lower Santa Ana River Marsh. Water elevation within the slough is presently controlled by a series of flood control gates and one-way drainage pipes. These water elevation control devices allow for normal tidal circulation but minimize flooding hazards present when higher water levels occur within the Santa Ana River during storm events. The purpose of the culvert and drainage pipe system is to allow unrestricted circulation and normal tidal flows into and out of the marsh area and prevent flooding of the interior marsh and slough during times of river flood stage. The existing flood control devices are part of a 1.84 square mile marsh restoration and enhancement project known as the Federal Lower Santa Ana River Project, which is part of the Santa Ana River Mainstem Project designed by the U.S. Army Corps of Engineers. The Federal Lower Santa Ana River Project includes habitat restoration, tidal circulation improvements, and flood control devices.

To further analyze the suitability of the site for the proposed development, Commission staff requested the preparation of a flooding and erosion hazard analysis and an analysis for the potential for tidal currents to erode the project site which might result in the need for protective devices in the future, prepared by an appropriately licensed professional (e.g. coastal engineer). In response, the applicants submitted, a *Drainage Assessment*, 435 Canal Street, Newport Beach, CA by FJK Engineering received February 1, 2006 that states that the shoreline currently adjacent to the project is unlined and has not exhibited any evidence of significant erosion and that the existing slope will not be altered and will remain in its present condition (no existing seawall or

bulkhead). In addition, it concludes that no grading or altering of the existing slope is necessary and that no seawall or bulkhead is necessary.

Although the applicants' report indicates that site is safe for development at this time, coastal areas are dynamic environments, which may be subject to unforeseen changes. Such changes may affect flooding and erosion regimes. Hydraulics are complex and may change over time, especially as flood control structures such as flood control gates and drainage pipes are modified, either through damage or deliberate design.

Flood and erosion hazards at the site are presently managed by mechanical structures. These existing flood control devices in the project area function in a manner that reduces flooding hazards. However, damage to these flood control devices could dramatically change flooding hazards at the site. In turn, flooding could cause increased erosion at the site. In order to address this situation with respect to Coastal Act policy, special conditions are necessary.

1. Assumption of Risk

Given that the applicants have chosen to implement the project despite potential risks from erosion or flooding, the applicants must assume the risks. Therefore, the Commission imposes **Special Condition No. 2** for an assumption-of-risk agreement. In this way, the applicants are notified that the Commission is not liable for damage as a result of approving the permit for development. The condition also requires the applicants to indemnify the Commission in the event that third parties bring an action against the Commission as a result of the failure of the development to withstand the hazards. In addition, the condition ensures that future owners of the property will be informed of the risks and the Commission's immunity from liability.

2. Future Shoreline Protective Device

The Coastal Act limits construction of protective devices because they have a variety of negative impacts on coastal resources, including adverse effects on sand supply, public access, coastal views, natural landforms, and overall shoreline beach dynamics on and off site, ultimately resulting in the loss of beach and habitat areas. Under Coastal Act Section 30235, a shoreline protective structure must be approved if: (1) there is an existing principal structure in imminent danger from erosion; (2) shoreline altering construction is required to protect the existing threatened structure; and (3) the required protection is designed to eliminate or mitigate the adverse impacts on shoreline sand supply.

The Commission has generally interpreted Section 30235 to require the Commission to approve shoreline protection for development only for existing principal structures. The construction of a shoreline protective device to protect new development would not be required by Section 30235 of the Coastal Act. The proposed project involves the demolition and construction of a new structure, which is considered new development. Allowing new development that would eventually require a shoreline protective device would conflict with Section 30251 of the Coastal Act; which states that permitted development shall minimize the alteration of natural landforms, including beaches and wetland habitat areas, which would be subject to increased erosion from such devices.

In the case of the current project, there currently is no seawall/bulkhead located on site nor do the applicants propose the construction of any shoreline protective device to protect the

proposed development. However nearby beachfront communities have experienced flooding and erosion during severe storm events, such as El Nino storms. Therefore, it is not possible to completely predict what conditions the proposed development may be subject to in the future. Consequently, it is conceivable the proposed development may be subject to flooding and erosion hazards.

Section 30253 (2) of the Coastal Act states that new development shall neither create nor contribute to erosion or geologic instability of the project site or surrounding area. Therefore, if the proposed structure requires a protective device in the future it would be inconsistent with Section 30253 of the Coastal Act because of the explicit statutory prohibition and because such devices contribute to erosion. In addition, the construction of a shoreline protective device to protect new development would also conflict with Section 30251 of the Coastal Act, which states that permitted development, shall minimize the alteration of natural land forms. This includes sandy beach and wetland habitat areas, which would be subject to increased erosion from shoreline protective devices. The applicants are not currently proposing a shoreline protective device and do not anticipate the need for one in the future. The coastal processes and physical conditions are such at this site that the project is not expected to engender the need for a shoreline protective device to protect the proposed development.

To further ensure that the proposed project is consistent with Section 30253 of the Coastal Act, and to ensure that the proposed project does not result in future adverse effects to coastal processes, the Commission imposes **Special Condition No. 3** which prohibits the applicants, or future land owner, from constructing a shoreline protective device for the purpose of protecting any of the development authorized as part of this application. This condition is necessary because it is impossible to completely predict what conditions the proposed structure may be subject to in the future.

By imposing the “No Future Shoreline Protective Device” special condition, the Commission requires that no shoreline protective devices shall ever be constructed to protect the development approved by this permit in the event that the development is threatened with damage or destruction from flooding, erosion, storm conditions or other natural hazards in the future.

3. Future Development

The project site is located on a waterfront lot that may be subject to future flooding and erosion as coastal conditions change. Since coastal processes are dynamic and structural development may alter the natural environment, future development adjacent to the water could adversely affect future shoreline conditions if not properly evaluated. For this reason, the Commission is imposing **Special Condition No. 4** which states that any future development or additions on the property, including but not limited to hardscape improvements, grading, landscaping, vegetation removal and structural improvements, requires a coastal development permit from the Commission or its successor agency. Section 13250 (b) of Title 14 of the California Code of Regulations specifically authorizes the Commission to require a permit for improvements that could involve a risk of adverse environmental effect. This condition ensures that any future development on this site that may affect shoreline processes receives review by the Commission.

The Commission finds that, based on the analysis submitted by the applicants, all significant risks of hazards from flooding and erosion at the site have been resolved, therefore, the Commission finds that the proposed development is consistent with Section 30253 of the Coastal Act. However, hazards potentially exist from flooding and erosion at the subject site if existing flood control devices deteriorate or are damaged. Therefore, to ensure that the proposed project does not result in future adverse effects to coastal processes, **Special Conditions No. 2, 3 and 4** have been imposed which require an assumption of risk agreement, no future shoreline protective devices agreement and future development agreement. As conditioned, the Commission finds that the proposed project is consistent with Coastal Act Section 30253.

D. BIOLOGICAL RESOURCES AND WATER QUALITY

Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30240(b) of the Coastal Act states:

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

The proposed development is occurring adjacent to Semeniuk Slough, which is a wetland as defined under the Coastal Act. One of the main reasons for preserving, expanding, and enhancing Southern California's remaining wetlands is because of their important ecological function. First and foremost, wetlands provide critical habitat, nesting sites, and foraging areas for threatened or endangered species. Wetlands also serve as migratory resting spots on the Pacific Flyway a north-south flight corridor extending from Canada to Mexico used by migratory bird species. In addition, wetlands serve as natural filtering mechanisms to help remove pollutants from storm runoff before the runoff enters into streams and rivers leading to the ocean. Further, wetlands serve as natural flood retention areas.

Moreover, preserving, expanding, and enhancing Southern California's remaining wetlands is particularly critical because of their scarcity. As much as 75% of coastal wetlands in southern California have been lost, and, statewide up to 91% of coastal wetlands have been lost.

Development, including grading and the construction of residential structures, could cause impacts upon adjacent wetlands by discharging silt to the wetlands. In addition, occupation and use of residential structures adjacent to wetlands can cause disturbances to the biological resources in the wetlands.

Section 30240(b) of the Coastal Act requires that development in areas adjacent to environmentally sensitive habitat areas, such as wetlands, must be sited and designed to prevent impacts which would significantly degrade those areas. In addition, Section 30231 of the Coastal Act requires that the biological productivity and quality of coastal waters and wetlands be maintained. One way the Commission has sought to protect wetlands is to establish a buffer between wetlands and proposed development. Buffer areas are undeveloped lands surrounding wetlands. Buffer areas serve to protect wetlands from the direct effects of nearby disturbance. In addition, buffer areas can provide necessary habitat for organisms that spend only a portion of their life in the wetland such as amphibians, reptiles, birds, and mammals. Buffer areas provide obstructions which help minimize the entry of domestic animals and humans to wetlands. Buffers also provide visual screening between wetland species that are sensitive to human impacts, such as lighting. Buffers can also reduce noise disturbances to wetland species from human development.

At the rear of the existing residence is an existing wooden deck located over the Semeniuk Slough. The Mean High Tide Line (MHTL) is located at approximately +9.40' elevation, which is located underneath the existing wooden deck and is also the location of an existing berm located underneath the deck. The existing wooden deck is located at +10.57' elevation. The proposed livable area of the single-family residence is located a minimum 31-feet and a maximum 40-feet from the MHTL and the 2nd floor deck is located approximately 28' from the MHTL. However, this buffer is much smaller than the 100-foot buffer normally required by the Commission for development adjacent to wetlands. However, since the subject lot is only approximately 95-feet deep, a 100-foot buffer would preclude the construction of any development on the lot.

The lot upon which the proposed development is being constructed pre-dates the Coastal Act. This lot was part of a larger residential subdivision which, like this lot, were developed with residential structures which are similar to the proposed development in square footage, dimension, and setback. The proposed development is in-fill development. Any impacts upon Semeniuk Slough related to light, noise and other disturbance related impacts have already been caused by the presence of the existing pre-Coastal Act development on this site and flanking the proposed project site. The proposed development would not result in any encroachment upon the wetlands. Also, the additional light, noise and related impacts caused by the proposed development would not be significant compared with the pre-existing development.

If construction equipment and staging is not appropriately managed, adverse impacts upon the Semeniuk Slough could occur. For instance, soil stockpiles could erode causing sedimentation of wetlands. In addition, if not sited appropriately, construction equipment and activity could cause trampling of the wetlands. Thus, a construction staging plan is necessary in order to demonstrate that construction equipment or activity shall not occur outside the staging area and identified construction corridor and that construction equipment and activity shall not be placed in any location, which would result in impacts to wetlands. The plan should include, at a minimum, the following components: a site plan that depicts the limits of the staging area(s); construction corridor(s); construction site; the location of construction fencing and temporary job trailers with respect to existing wetlands. The applicants have submitted a construction staging plan, which shows that construction equipment, materials or activity will not take place seaward of the existing wooden deck and thus will avoid impacts to wetlands (Exhibit #3). The measures proposed by the applicants are acceptable. However, in order to make sure that the proposed construction staging plan is adhered to, the Commission imposes **Special Condition No. 5**, which requires the applicants to conform with the submitted construction staging plan.

In addition, in order to ensure that construction and materials are managed in a manner which avoids impacts to adjacent wetlands, the Commission imposes **Special Condition No. 6**, which requires that construction materials, debris, or waste be placed or stored where it will not enter storm drains or be subject to tidal erosion and dispersion; removal of debris within 24 hours of completion of construction; implementation of Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed such that construction debris and sediment are properly contained and secured on site and to prevent the unintended transport of sediment and other debris into coastal waters by wind, rain or tracking.

During storm events, the pollutants which have collected upon the roof and upon other impervious surfaces created by the proposed project may be discharged from the site into the storm water system and eventually into coastal waters which can become polluted from those discharges. Water pollution can result in decreases in the biological productivity of coastal waters. In addition, impervious surfaces magnify peak flows dramatically which can lead to erosion. In order to mitigate these impacts, the applicants have submitted a drainage runoff and control plan that shows drainage on site will be directed to permeable areas (Exhibit #2). Also, sand bags will be used during construction to prevent any runoff from entering the Semeniuk Slough. The measures proposed by the applicants are acceptable. However, in order to make sure that the proposed water quality measures are implemented, the Commission imposes **Special Condition No. 7**, which requires the applicants to conform with the submitted drainage and runoff control plans. The placement of any vegetation in this drainage and runoff control plan that is considered to be invasive which could supplant native vegetation should not be allowed. Invasive plants have the potential to overcome native plants and spread quickly. Invasive plants are generally those identified by the California Invasive Plant Council (<http://www.cal-ipc.org/>) and California Native Plant Society (www.CNPS.org).). No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized within the property. Furthermore, any plants in the drainage and runoff control plan should be drought tolerant (preferably native to coastal Orange County) to minimize the use of water. The term drought tolerant is equivalent to the terms 'low water use' and 'ultra low water use' as defined and used by "A Guide to Estimating Irrigation Water Needs of Landscape Plantings in California" prepared by University of California Cooperative Extension and the California Department of Water Resources dated August 2000 available at <http://www.owue.water.ca.gov/landscape/pubs/pubs.cfm>.

An additional concern is the impact lighting may have upon the wetland. Thus, **Special Condition No. 8** has been imposed, which requires that all replaced or new lighting within the development shall be directed and shielded so that light is directed toward the ground and away from the wetlands.

In order to assure that no impacts to wetlands or water quality occur with the proposed project, **Special Conditions No. 5, 6, 7 and 8** have been imposed which require submittal of and conformance with a construction staging plan; conformance with certain requirements related to the storage and management of construction debris and equipment, conformance with a drainage and runoff control plan and direction of new or replaced exterior lighting on site. As conditioned, the Commission finds that the proposed project is consistent with Coastal Act Sections 30231 and 30240(b) of the Coastal Act.

E. PUBLIC ACCESS

Section 30210 of the Coastal Act states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30211 of the Coastal Act states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30212 of the Coastal Act states, in relevant part:

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

(2) adequate access exists nearby...

The subject site is a waterfront lot located between the nearest public roadway and the shoreline in the City of Newport Beach. There is wetland adjacent to the subject site. Public access, as indicated in the City's certified land use plan, is available adjacent to the project site along the Federal land adjacent to the slough accessible at street ends located off of Canal Street and at a street end located three (3) lots (approximately 130 feet) north of the project site (Exhibit #1).

When a private development does not provide adequate on-site parking, users of that development who arrive by automobile are forced to occupy public parking used by visitors to the coastal zone. Thus, all private development must provide adequate on-site parking to minimize adverse impacts on public access.

The Commission has consistently found that two parking spaces are adequate to satisfy the parking demand generated by one individual residential unit. The existing single-family residence has a two-car garage and the proposed project will also have a two-car garage. Thus, as proposed, the development is consistent with the parking typically required by the Commission. Therefore, as proposed, the Commission finds adequate access is available nearby, sufficient parking is provided on site and thus, the proposed development is consistent with Sections 30210, 30211 and 30212 of the Coastal Act.

F. DEED RESTRICTION

To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, the Commission imposes **Special Condition No. 9** requiring that the property owners record a deed restriction against the residential property, referencing all of the above special conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the Property. Thus, as conditioned, any prospective future owner will receive actual notice of the restrictions and/or obligations imposed on the use and enjoyment of the land including the risks of the development and/or hazards to which the site is subject, and the Commission's immunity from liability.

G. LOCAL COASTAL PROGRAM

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal development permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program that conforms with the Chapter 3 policies of the Coastal Act.

The City of Newport Beach Land Use Plan (LUP) was certified on May 19, 1982. Since the City only has an LUP, the policies of the LUP are used only as guidance. The recently updated (October 2005) Newport Beach LUP includes the following policies that relate to development at the subject site:

Require removal of unauthorized bulkheads, docks and other patios or other structures that impact wetlands or other sensitive habitat (Policy 4.1.3-1 A)

Strictly control encroachments into natural habitats to prevent impacts that would significantly degrade the habitat (Policy 4.1.3-1 D)

Remove unauthorized structures that encroach into the Semeniuk Slough, the Upper Newport Bay Marine Park, or other wetland areas. Prohibit future encroachment of structures into these areas unless structures are absolutely necessary for public well being. Minimize any necessary encroachment into wetland habitats to the extent feasible and permanent loss of wetland habitat shall be mitigated (Policy 4.1.3-10).

Require buffer area around wetlands of a sufficient size to ensure the biological integrity and preservation of the wetland that they are designed to protect. Wetlands shall have a minimum buffer width of 100 feet wherever possible. Smaller wetland buffers may be allowed only where it can be demonstrated that 1) a 100-foot wide buffer is not possible due to site specific constraints, and 2) the proposed narrower buffer would be amply protective of the biological integrity of the wetland given the site-specific characteristics of the resource and of the type and intensity of disturbance (Policy 4.2.2-3).

The project site has an unpermitted wooden deck that encroaches into the Semeniuk Slough. The proposed project does not seek authorization of this unpermitted structure. As conditioned for revised plans to show and state that the deck is not authorized by any Coastal Development Permit, the proposed project is consistent with the above LUP policies. In addition, a minimal buffer is allowed due to the size of the subject lot and the adequateness of the size of the buffer based on what is being protected. The proposed development, as conditioned, is consistent with Chapter 3 of the Coastal Act and with the certified Land Use Plan for the area. Approval of the project, as conditioned, will not prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3.

H. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 13096(a) of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the

California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or further feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The proposed project is located in an urban area. All infrastructure necessary to serve the site exists in the area. As conditioned, the proposed project has been found consistent with the hazard, biological resource and water quality protection, visual resource and public access policies of Chapter 3 of the Coastal Act. Mitigation measures include: **1)** submittal of revised final plans; **2)** an assumption-of-risk agreement; **3)** no future shoreline protective device agreement; **4)** future development agreement; **5)** conformance with the submitted construction staging plan; **6)** conformance with certain requirements related to the storage and management of construction debris and equipment; **7)** conformance with the submitted drainage and run-off control plan; **8)** adherence to requirements for exterior lighting adjacent to the wetland; and **9)** a deed restriction against the residential property, referencing all of the special conditions contained in this staff report.

As conditioned, there are no feasible alternatives or additional feasible mitigation measures available which would substantially lessen any significant adverse effect, which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.



